

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 18, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:16-10543 Dean Albert Maury Cazares

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane Weil, Chapter 7 Trustee

Greenberg & Glusker, LLP, Attorney for Trustee

LEA Accountancy, LLP, Accountant for Trustee

Docket 225

Tentative Ruling:

Diane C. Weil, chapter 7 trustee - approve fees of \$19,650.01 and expenses of \$310.28, on a final basis.

Greenberg Glusker, LLP, counsel for chapter 7 trustee - allow fees of \$486,963.50 and expenses of \$6,803.52, on a final basis, subject to approved distribution of \$171,517 in fees and reimbursement of \$58.47 in expenses, as set forth in the Trustee's Final Report and agreed to by counsel.

LEA Accountancy, LLP, accountants for chapter 7 trustee - approve fees of \$9,973.00 and expenses of \$640.03, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

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CONT... Dean Albert Maury Cazares

Chapter 7

Trustee(s):

Diane C Weil (TR)

Represented By
C John M Melissinos
Jeffrey A Krieger
Keith Patrick Banner

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1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#2.00 Post confirmation status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20; 12/3/20(stip);
2/11/21(stip); 3/25/21; 4/8/21(stip); 4/22/21; 5/20/21

Docket 1

***** VACATED *** REASON: Case closed on interim basis on 10/19/2021.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melida Jimenez

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Joint Debtor(s):

Jose Luis Jimenez Escobar

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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1:20-11237 BGS WORKS, INC.

Chapter 11

#3.00 Confirmation hearing re chapter 11 plan of reorganization
fr. 10/21/21(stip); 11/4/21(stip)

Docket 117

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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1:20-11237 BGS WORKS, INC.

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 9/10/20; 4/22/21; 6/3/21; 7/8/21; 8/26/21; 10/21/21(stip); 11/4/21(stip)

Docket 1

Tentative Ruling:

The debtor has not filed its monthly operating report for September 2021.

Has the debtor filed its income tax returns for 2020?

Why hasn't the Court-approved post-petition financing been funded? [docs. 110 and 130]. What is the status of the related loan documents?

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

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1:20-12046 Buena Park Drive LLC

Chapter 11

#5.00 Order to Show Cause Why the Court Should Not
Dismiss or Convert This Case to Chapter 7

Docket 188

Tentative Ruling:

On June 22, 2021, the Court entered an order setting a deadline of November 5, 2021 for the debtor to confirm a chapter 11 plan of reorganization [doc. 159]. On September 30, 2021, the Court issued the *Order to Show Cause Why the Court Should Not Dismiss or Convert This Case to Chapter 7* (the "OSC") [doc. 188]. In the OSC, the Court instructed that, if the debtor did not confirm a chapter 11 plan by the Court's deadline, the debtor must file and serve a response to the OSC no later than November 4, 2021.

The debtor did not timely confirm a chapter 11 plan and did not timely file a response to the OSC. As such, there is cause to dismiss or convert this case.

In the debtor's schedule A/B, the debtor identified an interest in two real properties located in Studio City, CA (the "Properties") and valued the Properties at \$2.2 million. In its proof of claim, National Loan Acquisition Company ("NLAC") asserted a claim, secured by the Properties, in the amount of \$2,014,331.78. In addition, the Los Angeles County Treasurer and Tax Collector filed a proof of claim asserting a claim, secured by the Properties, totaling \$30,989.67. In its disclosure statement [doc. 163], the debtor identified another claim, secured by the Properties, in favor of California Engineering and Shotcrete in the amount of \$23,350. In light of these encumbrances, any liquidation of the Properties in a chapter 7 case would not yield any distribution to unsecured creditors after accounting for costs of sale and administrative fees and costs. As a result, dismissal of this case is in the best interest of creditors.

The Court will prepare the Order.

Party Information

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CONT... Buena Park Drive LLC

Chapter 11

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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1:20-12046 Buena Park Drive LLC

Chapter 11

#5.10 Creditor's motion to dismiss under 11 U.S.C. § 1112(b)
fr. 11/4/21

Docket 199

Tentative Ruling:

See calendar no. 5.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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1:20-12046 Buena Park Drive LLC

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 1/14/21; 2/4/21; 6/17/21; 8/5/21; 9/23/21

Docket 1

Tentative Ruling:

See calendar no. 5.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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1:21-10500 Restornations

Chapter 11

#7.00 Order to Show Cause Why Case Should Not
Be Converted To One Under Chapter 7

Docket 0

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Restornations

Represented By
Michael E Plotkin

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1:21-10500 Restorations

Chapter 11

#8.00 Motion by Harlan Helvey to Dismiss or Convert

fr. 11/4/21

Docket 92

Tentative Ruling:

In the motion, movant contends that the debtor cannot confirm a chapter 11 plan unless the debtor provides for payment of movant's debt, in full, on the effective date of the Plan. *See* Motion, p. 7, ¶ 21. However, because the real property is not the "debtor's principal residence," the anti-modification clause of 11 U.S.C. § 1123(b)(5) does not apply to this case. In fact, under 11 U.S.C. § 1123(a)(5)(H), the chapter 11 plan may provide for the "extension of a maturity date...."

The cases cited by movant are either inapplicable or support the opposite conclusion. In *In re Seidel*, 752 F.2d 1382 (9th Cir. 1985), the Ninth Circuit Court of Appeals addressed whether the debtor's chapter 13 plan impermissibly modified the rights of a secured creditor with a lien against the debtor's principal residence. Once again, as the property at issue is not "the debtor's principal residence," the anti-modification clause of 11 U.S.C. § 1123(b)(5), which mirrors the anti-modification clause at issue in *Seidel*, does not apply to this case.

In *In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988), the Court of Appeals addressed whether the debtor could avoid the consequences of default, such as a higher post-maturity interest rate, by paying the secured creditor in full on the effective date of a plan; the pertinent issue before the Court of Appeals was whether such a payment qualified as a "cure" for purposes of the Bankruptcy Code. *Entz-White*, 850 F.2d at 1340. As part of this determination, the Court of Appeals referenced 11 U.S.C. § 1124, "which determines whether a party is impaired by a Chapter 11 reorganization plan." *Id.*

The Court of Appeals held that payment of the debt in full, on the effective date, was a "cure" for purposes of 11 U.S.C. § 1124 and, as a result, the secured creditor was unimpaired. *Id.* at 1342-43. The *Entz-White* court did not hold that loans that

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Restornations

Chapter 11

matured prepetition could not be paid over a period of time. Rather, the Court of Appeals addressed whether the proposed payment on the effective date rendered the claim unimpaired.

Thus, if the claims are not protected by the anti-modification provision of 11 U.S.C. § 1123(b)(5), a plan that proposes treatment of a claim over a period of time does not, in and of itself, run afoul of the Bankruptcy Code. Rather, in accordance with 11 U.S.C. § 1124, such treatment may designate the claim impaired with a right to vote on the chapter 11 plan. A chapter 11 debtor must then satisfy the confirmation requirements set forth in 11 U.S.C. § 1129.

In light of the above, the Court will not dismiss or convert this case, at this time, based simply on the debtor's proposed treatment to pay movant's claims, either in full or over time, subsequent to the effective date of the debtor's chapter 11 plan. As to the other issues raised in the motion, at this time, the Court will not dismiss or convert this case based on the debtor's belated filing of its chapter 11 plan and related proposed disclosure statement.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Restornations

Represented By
Michael E Plotkin

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1:21-10500 Restorations

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 5/20/21; 10/14/21

Docket 1

Tentative Ruling:

Will the debtor timely pay its post-petition property taxes? *See* Proof of Claim 2-2, filed by the Los Angeles County Treasurer and Tax Collector.

Has the debtor filed its income tax returns for 2020? Did the debtor use an accountant to assist with the preparation of those income tax returns?

Having reviewed the *Declaration of Steve Adawalla* [doc. 107] filed in response to the *Order to Show Cause Why Case Should Not Be Converted to One Under Chapter 7* [doc. 100], the Court will set the following deadlines:

No later than **December 1, 2021**, the debtor must file any and all of its objections to the claims set forth in Proofs of Claim No. 4, No. 5 and No. 6, filed by Harlan Helvey.

No later than **April 1, 2022**, the debtor must obtain confirmation of a chapter 11 plan.

Proposed dates and deadlines regarding the debtor's submitted disclosure statement in support of its plan of reorganization [doc. 89]:

Hearing to consider approval of the proposed disclosure statement: **1:00 p.m. on January 13, 2022.**

Deadline to file and serve notice of: (1) hearing to consider approval of disclosure statement and (2) deadline to file and serve any objections to its approval: **December 2, 2021**. The debtor must serve the notice on all creditors, parties requesting special notice and the United States Trustee. Fed. R. Bankr. P. 2002(b).

Deadline to file and serve any objections to Court's approval of disclosure statement:

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December 30, 2021.**

Chapter 11

Deadline to file and serve any reply to any objections to Court's approval of disclosure statement: **January 6, 2022.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to confirming a chapter 11 plan, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before any continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order.

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

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1:21-11450 Roberto C. Hernandez

Chapter 11

#10.00 U.S. Trustee's Motion to Dismiss or Convert Case

Docket 53

***** VACATED *** REASON: Continued by stip to 12/9/21 at 2:00 pm - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:11-10418 Gary L Glasband

Chapter 11

#11.00 Motion For An Order Enforcing Plan Injunction, Injunction,
And Sanctions In The Amount Of \$40,626.95 Pursuant To
11 U.S.C. section 105 And Bankruptcy Court Rules 9014 And 9020

fr. 9/23/21

Docket 127

Tentative Ruling:

BACKGROUND

On January 6, 2010, Gary Glasband ("Debtor") filed a chapter 11 petition. At that time, BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP ("BAC") held and serviced the loan secured by Debtor's real property located in Long Beach, California (the "Long Beach Property") [FN1]. Declaration of Gary L. Glasband, ¶¶ 2-3 and Ex. A2 thereto (BAC Proof of Claim 11-1) [doc. 128]. Subsequently, BAC transferred the loan to Nationstar Mortgage, LLC ("Nationstar") as servicer for HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors, Inc., Mortgage Pass-Through Certificates, MANA Series 2007-AF21 ("HSBC"). *See Amended Secured Creditor's Response to Debtor's [Motion] to Reopen the Chapter 11 Case for the Purpose of Filing a Motion for Sanctions* [doc. 139], p. 2, ¶ 2.

On August 30, 2010, BAC filed a notice of its election under 11 U.S.C. § 1111(b) (2) (the "Notice of § 1111(b) Election") to have its claim treated as fully secured for purposes of chapter 11 plan confirmation [doc. 48]. On October 1, 2010, Debtor filed an amended chapter 11 plan (the "Amended Plan") [doc. 62].

According to the Amended Plan, the secured claim of BAC, placed in Class 3, would receive a new promissory note (the "Class 3 Note") from Debtor in the principal amount of BAC's allowed claim, \$945,917.02, "which amount will not bear interest." The Class 3 Note would provide for payments based upon the Long Beach Property's value of \$720,000, commencing on the "Effective Date, amortized over 316 months at 3.4%, with a maturity date of March 1, 2037." On the "Effective Date," the Debtor

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CONT... Gary L Glasband

Chapter 11

also would make a payment on the Class 3 Note in the amount of \$15,924 from accrued rent, which was to be applied to the principal amount owed under the Class 3 Note [doc. 62].

On October 7, 2010, the Court entered an order holding that BAC's claim, secured by the Long Beach Property, "is a secured claim of \$720,000, and the balance of its claim is an unsecured claim." [doc. 66]. This order states that it "does not affect the right of BAC, if any, to elect application of 11 U.S.C. § 1111(b) (2)." *Id.*

Pursuant to a stipulation between Debtor and BAC, filed on November 30, 2010, *i.e.* the *Stipulation Resolving Objection to Motion to Approve Disclosure Statement and Providing for Agreed Plan Treatment for the Objected Secured Creditor on Class 3 Claim* (the "BAC Stipulation") [doc. 75], Debtor agreed to change the Amended Plan's treatment of BAC's secured claim. The BAC Stipulation provides that "the Debtor's Chapter 11 Plan shall provide for payments to [BAC] based upon the value of the [Long Beach Property] in the amount of \$720,000.00, amortized at 5.5% interest over 30 years. The amount of the principal *and interest* payments will be \$4,088.00 per month." BAC Stipulation, p. 2, ¶¶ 4-12 [doc. 75](emphasis added).

On December 22, 2010, the Court entered an order approving the BAC Stipulation [doc. 84]. On March 11, 2011, the Court entered an order confirming the Amended Plan, as modified by the BAC Stipulation (the "Confirmation Order") [doc. 99].

After the Court entered an order for final decree, this case was closed on August 22, 2011 [doc. 112]. The Court reopened this case on August 30, 2021 [doc. 125].

Post-confirmation, regarding the Class 3 Note, Nationstar has sent "informational statements" to Debtor regarding payments due and the calculation of those payments. On July 12, 2021, Nationstar sent a letter (the "July 2021 Letter") to Debtor stating that Nationstar intended to enforce the Class 3 Note and related deed of trust, based on its assessment of a default under the Class 3 Note. The July 2021 Letter states: "If you do not pay the full amount of the default, [Nationstar] may accelerate the entire sum of both principal and interest due and payable, and invoke any remedies provided in the Note and Security Instrument, including but not limited to the foreclosure sale of the property." *See* Exhibits G and H attached to Declaration of Gary L. Glasband [doc. 128].

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Referring to the "informational statements," the July 2021 Letter and other correspondence received from Nationstar, Debtor contends that Nationstar has made "unwarranted and excessive payment demands in violation of the [Amended] Plan's injunction" and is demanding "unwarranted amounts to reinstate the [Class 3 Note] (which was then and is now current)" Declaration of Gary L. Glasband, ¶ 13.

DISCUSSION

Whether a party has violated the plan injunction is evaluated according to an objective standard. *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 204 L. Ed. 2d 129 (2019). Under the "fair ground of doubt standard," civil contempt may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope. *Id.* In *Taggart*, the Supreme Court explained that a creditor's "good faith belief" that it is complying with the discharge order is not a suitable standard, because it relies on "difficult-to-prove" states of mind. *Id.* at 1803.

Despite the Notice of § 1111(b) Election, it appears that the BAC Stipulation, which refers to use of an interest rate of 5.5%, and to "principal *and interest* payments" understandably led to Nationstar's confusion about the terms of the Amended Plan and the Class 3 Note and how to apply Debtor's post-confirmation payments.

At this time, the Court's inclination is to continue this hearing, in order to provide the parties with additional time to reach a consensual resolution of this dispute, as well as to provide Nationstar and HSBC with more time to file a brief and evidence to address Debtor's requests for relief and whether or not the Court's imposition of sanctions would be appropriate.

FOOTNOTE

[FN1]: Debtor seeks relief from Bank of America N.A. ("BOA"). Debtor's reference to BOA appears to lack any merit. If Debtor seeks relief from BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP ("BAC"), given the extensive amount of time that has passed since BAC was actively involved in this case, Debtor must serve the motion and notice of the hearing and the deadline to file

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any response on BAC in accordance with Fed. R. Bankr. P. 7004(b)(3), i.e., by first class mail **addressed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.**

Party Information

Debtor(s):

Gary L Glasband

Represented By
Robert M Yaspan

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1:16-10500 Jason Avetis Alepyan and Kristine Keshishyan

Chapter 7

#12.00 Motion to Reopen Chapter 7 Case to Avoid three Liens

Docket 19

Tentative Ruling:

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

Party Information

Debtor(s):

Jason Avetis Alepyan

Represented By
Roland H Kedikian

Joint Debtor(s):

Kristine Keshishyan

Represented By
Roland H Kedikian

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:18-12660 Mohsen Loghmani

Chapter 7

#13.00 Trustee's Motion to: (1) Approve compromise under FRBP 9019 with Tessie Cleveland Community Service; and (2) Approve sale of estate's interest in state court claims; (a) Outside the ordinary course of business; (b) Free and clear of liens, claims, and interests under 11 U.S.C. section 363(f); (c) For good faith determination under 11 U.S.C. section 363(m); and (d) for waiver of 14 day stay

fr. 9/9/21; 10/21/21

Docket 152

Tentative Ruling:

I. BACKGROUND

On October 26, 2009, Tessie Cleveland Community Services Corp. ("Tessie") filed a complaint against Mohsen Loghmani ("Debtor") and other defendants, initiating case no. TC023641 (the "State Court Action"). Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 152], ¶ 7, Exhibit 2. Through the State Court Action, Tessie obtained a final judgment in the amount of \$1,958,229.87 (the "Judgment"). *Id.* Calculated with interest, the amount of the Judgment currently exceeds \$3.5 million. *Id.*

On September 23, 2014, Tessie filed another complaint against Debtor and Debtor's son, Ciavash Loghmani ("Matt"), among other defendants, initiating case no. BC558489 (the "Fraudulent Transfer Action"). *See* Proof of Claim 5-1. According to Matt, through the Fraudulent Transfer Action, Tessie alleges that Debtor fraudulent transferred two real properties and a BMW to Matt.

On August 1, 2016, Debtor and his spouse filed a joint chapter 7 petition. [FN1]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On December 4, 2017, Trustee filed a notice of assets, setting a claims bar date of March 9, 2018 (the "Bar Date"). On December 6, 2017, the Franchise Tax Board timely filed a proof of claim asserting a priority claim in the amount of \$20,798.51, as

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amended on August 8, 2018. On February 7, 2018, American Express Bank, FSB, timely filed a proof of claim for \$5,885.42. On March 9, 2018, Tessie timely filed three proofs of claim totaling \$3,005,250.32.

On April 15, 2021, the Court entered an order [doc. 149] approving the sale of Debtor's interest in Huntley-Broadlawn, LLC ("Huntley"), an entity that owned and operated a preschool. As such, the bankruptcy estate is holding \$209,909.11 (the "Funds") to distribute to creditors. Gottlieb Declaration, ¶ 20.

On August 19, 2021, the Trustee filed a motion for approval of a compromise between the estate and Tessie and sale of certain litigation claims held by the estate to Tessie (the "Motion") [doc. 152]. To the Motion, the Trustee attached the proposed agreement between the estate (the "Estate") and Tessie (the "Agreement"), which provides, in relevant part—

- Allowance of Tessie's Claims and Liens: Tessie's claim[s] shall be allowed in the amount of \$3.5 million. Tessie shall have a lien on all assets of the [E]state including recoveries from avoidance actions, excluding Funds currently held by the Estate.
- Subordination of Tessie's Claims: Unless outbid, Tessie subordinates all of its secured and unsecured claims in favor of all allowed administrative claims and the two unsecured claims timely filed by the Claims Bar Date. As noted above, Tessie does not have lien on the Funds. Rather, Tessie has agreed that for purposes of distribution pursuant to 11 U.S.C. § 510(c)(1), its claims shall be subordinated to the extent necessary to pay the specified claims. Except as specifically described, Tessie will retain the balance of its liens against all other assets including the Estate's Claims. Trustee will make distributions of estate property with all of Tessie's Claims being paid pursuant to the priority set forth in 11 U.S.C. § 726(a)(2)(C) and only after payment of the allowed administrative claims and the unsecured claims of the FTB, and American Express Bank, FSB, to the extent those claims are allowed; and
- Assignment of Estate's Claims to Tessie: In consideration for the subordination, Trustee will sell and assign all of the Estate's Claims to

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Mohsen Loghmani

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Tessie subject to overbid. The assigned Claims include all claims for relief and causes of actions in which the Estate has any legal or equitable interest including all causes of action under Chapter 5 of Title 11 of the United States Code and all defensive appellate rights held by the Estate ("Purchased Assets"). The Purchased Assets include all avoidance actions and all of the Estate's claims against Tessie including any ability to avoid Tessie's liens or to challenge Tessie's judgments and claims and are being sold as-is, where-is, and without any representations or warranties including the ability of Tessie to prosecute or recover on any such Claims.

- Overbids. The sale of the Purchased Assets is subject to overbid. Trustee seeks approval of the compromise set forth in the Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and approval of the sale of the Claims pursuant to 11 U.S.C. § 363(b).

Gottlieb Declaration, ¶ 6.

On August 26, 2021, after the Trustee filed the Motion, two additional claimants filed claims against the Estate: (A) Mohammad Hossein Loghmani ("Mohammad"), Debtor's brother, asserted a claim for \$340,000; and (B) Mahtab Azghadi ("Mahtab"), Debtor's sister-in-law, asserted a claim for \$65,000. Concurrently with the filing of these proofs of claim, Matt (Debtor's son) filed an opposition to the Motion (the "Opposition") [doc. 157]. In the Opposition, Matt contends that, prepetition, he loaned Debtor a total of \$22,496 and paid Debtor \$5,200 for a car. According to Matt, in February 2012, Debtor conveyed two real properties to satisfy the \$22,496 loan. Matt also asserts that, from 2011 through 2020, Huntley paid him \$356,000 in wages.

According to Matt, through the Fraudulent Transfer Action, Tessie is attempting to recover the transfer of the properties, the car and the wages as fraudulent transfers and, as a result, Matt is a creditor of the Estate by operation of 11 U.S.C. § 502(h). Matt argues that the Agreement is not in the best interest of Mohammad, Mahtab or Matt, as creditors of the Estate. On September 2 and 3, 2021, the Trustee and Tessie filed replies to the Opposition [docs. 159, 160].

On September 9, 2021, the Court held a hearing on the Motion. At that time, the Court continued the hearing to provide Tessie an opportunity to object to

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Mohammad's and Mahtab's claims. On September 14, 2021, Tessie filed objections to Mohammad's and Mahtab's claims (the "Objections to Claim") [docs. 162, 165].

On October 21, 2021, the Court held a hearing on the Objections to Claim. At that time, the Court ruled that it "will not treat the tardily filed claims [of Mohammad and Mahtab] with equal priority to timely filed unsecured claims." Court's Ruling [doc. 180], p. 1. On the same date, the Court held a continued hearing on the Motion. At that time, the Court further continued the hearing to provide Tessie and Matt an opportunity to brief whether the Trustee may sell the estate's avoidance claims.

On October 28, 2021, Tessie filed its supplemental brief on the issue [doc. 177]. On November 4, 2021, Matt filed his supplemental brief on the issue [doc 183].

II. ANALYSIS

A. Standing

In the Opposition, Matt contends he has standing under 11 U.S.C. § 502(h), which provides—

A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

According to Matt, if Tessie obtains a judgment against Matt in the Fraudulent Transfer Action, Matt will have a claim against the Estate. As noted by Tessie in its supplemental brief, Matt's ability to file a claim under § 502(h) is speculative; at this time, it is unclear if Tessie will obtain a judgment that allows Matt to file a proof of claim under this statute. Nevertheless, for purposes of this Motion, the Court will assume Matt has standing and rule on the merits of the arguments.

B. The Trustee's Ability to Sell Avoidance Claims

In his supplemental brief, Matt relies primarily on *Silverman v. Birdsell*, 796

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Fed.Appx. 935 (9th Cir. 2020), for the proposition that the Trustee may not sell the estate's avoidance claims to Tessie. In *Silverman*, the Ninth Circuit Court of Appeals reiterated that "a bankruptcy trustee may sell an estate's avoidance claims to a creditor when 'the creditor is pursuing interests common to all creditors' and 'allowing the creditor to exercise those powers will benefit the remaining creditors.'" *Silverman*, 796 Fed.Appx. at 937 (quoting *In re P.R.T.C., Inc.*, 177 F.3d 774, 782 (9th Cir. 1999)). The Court of Appeals further stated—

Although these requirements must be met when the purchasing creditor plans to actually pursue the claims, nothing in *In re P.R.T.C.* suggests that the analysis is the same when, as here, the sale is expected to result in abandonment of the claims by transferring them to the would-be defendant. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (9th Cir. BAP 2005).... [N]othing in *In re P.R.T.C.* precludes transferring the trustee's avoidance powers to a self-interested party that will abandon those claims, so long as the overall value obtained for the transfer is appropriate. As the Bankruptcy Appellate Panel (BAP) has recognized, *In re P.R.T.C.* stands for the simple proposition that a trustee's "avoiding powers may be transferred for a sum certain." *In re Lahijani*, 325 B.R. at 288. Thus, contrary to Appellants' argument, we have not categorically prohibited the type of sale approved by the bankruptcy court here.

Id. The *Silverman* court then applied the general test, under *In re A & C Props.*, 784 F.2d 1377 (9th Cir. 1986), discussed below, to determine whether the bankruptcy court's approval of the sale of the estate's claim was appropriate. *Id.*, at 938. The Court of Appeals held that, under the *A & C Properties* test, the record supported the bankruptcy court's approval of the sale of the estate's avoidance claims to a creditor. *Id.* In *P.R.T.C.*, the Court of Appeals further explained—

[W]hen determining whether an assignment benefits the remaining creditors, we consider the assignment in light of the other options before the court. The bankruptcy court could have ordered the claims and rights to remain a part of the estates. Under that option, the creditors would receive no benefit, because the estates had insufficient

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funds to pursue those claims and rights.

P.R.T.C., 177 F.3d at 783. In that case, the Court of Appeals affirmed the bankruptcy court's approval of the compromise because "[t]hat option... would be sufficient to satisfy at least some of the creditors' claims." *Id.*

In light of the above, the applicable authorities do not prohibit the Trustee from assigning or selling avoidance claims. Rather, where the Trustee sells the avoidance claims for the purposes of abandonment of those claims, the Court must assess the agreement to sell such claims as it would any other compromise involving the estate; specifically, the Court must analyze the sale by considering the factors set forth in *A & C Properties*.

C. Approval of the Compromise

Federal Rule of Bankruptcy Procedure 9019(a) provides the following: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In deciding whether to approve a compromise, courts must determine whether it is fair and equitable, and whether it is reasonable under the particular circumstances of the case. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Although "[t]he law favors compromise and not litigation for its own sake," the law requires "more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement." *Id.* "[A]s long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." *Id.* In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

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Id. (citations omitted). It is the movant's burden to establish that the settlement is reasonable and should be approved. *Id.* Courts have recognized that the court should not substitute its own judgment for that of the trustee, but rather should ensure that the trustee has exercised proper business judgment and the settlement "falls above the lowest possible point in the range of reasonableness." *In re Rake*, 363 B.R. 146, 152 (Bankr. D. Idaho 2007) (internal quotation omitted).

Here, as set forth in detail by the Trustee, Tessie and Trustee dispute whether the Estate or Tessie is the proper party in interest to pursue certain avoidance claims, including claims asserted by Tessie in the Fraudulent Transfer Action. As such, prior to prosecuting such avoidance claims on behalf of the Estate, the Trustee would have to file a motion to substitute the Estate in place of Tessie in the Fraudulent Transfer Action. The dispute would involve complex law on standing and statutes of limitation which a court would have to resolve before either party could succeed with the litigation. It is unclear if the Trustee would be successful.

Moreover, even if the Trustee established that the Estate is the proper party in interest, the Trustee would have to expend significant Estate resources to prosecute the avoidance claims and, if successful, attempt to recover the property into the Estate. The administrative fees and costs would greatly diminish any recovery by the Trustee. Assuming the Trustee recovered unliquidated real or personal property, the Trustee would then incur additional fees and costs liquidating the properties for distribution to creditors. These facts establish that the first three factors in the *A & C Properties* test weigh in favor of approving the Agreement. Matt does not offer any evidence or argument challenging these factors.

The primary dispute revolves around the last factor, i.e., whether the settlement is in the paramount interest of creditors. As set forth by the Trustee, the Estate is ready to make a distribution. However, Tessie asserts claims totaling \$3,005,250.32. The subordination of these claims will directly benefit the unsecured creditors with timely filed claims; without subordination, Tessie's substantial claim would yield a tiny percentage to these creditors.

Matt asserts that the Court should not approve the compromise because the agreement will not benefit specific creditors of the estate, i.e., creditors holding claims with lower priority than timely-filed nonpriority unsecured claims in accordance with 11

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U.S.C. § 726. Matt has not provided any authority that requires a court to ensure that creditors of *every* priority level receive a distribution from a compromise with the estate. In addition, as discussed by Tessie in its supplemental brief, even if the Trustee prosecutes the estate's avoidance actions, creditors holding tardily-filed claims are unlikely to receive a distribution, especially in light of the significant administrative fees and costs required to recover funds into the estate. Thus, whether the Trustee prosecutes the estate's claims or sells the claims pursuant to the Agreement, creditors holding tardily-filed claims will not receive a distribution.

On the other hand, if the Court denies the Motion, unsecured creditors with timely-filed claims may receive significantly *less* than they will receive pursuant to the Agreement. As such, approval of the Agreement is in the paramount interest of creditors because, as a whole, creditors stand to receive more from the compromise than from the Trustee's prosecution of the estate's avoidance claims.

D. Treatment of Matt's Claim

With respect to the impact of any claim Matt may have against the estate under 11 U.S.C. § 502(h), pursuant to 11 U.S.C. § 502(d)—

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, **unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable** under section 522(i), 542, 543, 550, or 553 of this title.

Emphasis added. A claim under § 502(h) "is not allowable under 11 U.S.C. § 502(d) until after the property has been surrendered to the estate." *In re Verco Indus.*, 704 F.2d 1134, 1139 (9th Cir. 1983); *see also In re JWJ Contracting Co., Inc.*, 2007 WL 7540951, at *11 (B.A.P. 9th Cir. Mar. 30, 2007) ("Under § 502(d), unless the creditor returns the avoided transfer to the estate, the court will disallow the claim.").

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In accordance with § 502(d), even if Matt has a claim under 11 U.S.C. § 502(h), such claim is disallowed unless Matt turns over to the estate property recovered under the specific statutes set forth in § 502(d). As such, if Tessie dismisses any claim that would result in recovery of property into the estate under these statutes, any § 502(h) claim otherwise available to Matt would be disallowed.

In its supplemental brief [doc. 177], Tessie contends that it "does not intend to affirmatively assert any avoidance powers based on the Bankruptcy Code."

Supplemental Brief, p. 15. However, Tessie has not filed a declaration explicitly stating that, if the Court allows the purchase of the estate's avoidance claims, Tessie will not pursue the estate's claims against Matt under 11 U.S.C. §§ 542, 543, 550, 553, 522(f), 522(h), 544, 545, 546, 548, 549 or 724(a). If Tessie will not file such a declaration, the Court could continue this hearing for the parties to provide supplemental briefing regarding estimation of Matt's potential claim under § 502(h), in accordance with § 502(c).

Alternatively, Tessie may set aside funds in a reserve account for payment of any claim Matt eventually may have under § 502(h). In his declaration opposing this motion [doc. 157], Matt stated that the transfers that are the subject of Tessie's fraudulent transfer action were made in repayment of a \$22,596 loan Matt made to his father. Declaration of Matt Loghmani, ¶ 8. As such, assuming Tessie obtains a judgment against Matt, **based on the applicable Bankruptcy Code sections**, and Matt becomes the holder of a valid claim in accordance with § 502(d) and (h), to preserve Matt's ability to receive payment on that potential claim, Tessie may set aside \$22,596 in a reserve account to be paid to Matt. *See In re Walldesign, Inc.*, 2018 WL 3653877 at *5 (B.A.P. 9th Cir. Aug. 2, 2018) (aggregating authorities and holding that the amount of a claim allowed under § 502(h) is not the value of the property recovered but the value of the consideration paid by the transferee for the property recovered).

III. CONCLUSION

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The parties should be prepared to discuss the issues set forth above.

FOOTNOTES

1. On October 19, 2018, the Court entered an order severing Debtor's and his spouse's bankruptcy case [doc. 80].

Party Information

Debtor(s):

Mohsen Loghmani

Pro Se

Movant(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

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#14.00 Creditor Tessie Cleveland Community Services Corporation's objection to claim of Mahtab Azghadi [Claim #7]

fr. 10/21/21

Docket 165

Tentative Ruling:

Court's Ruling from October 21, 2021 [Doc. 180]

The Court will not treat tardily filed claims with equal priority to timely filed unsecured claims. If the movant elects to proceed with disallowance of the claim, the Court will set an evidentiary hearing on the validity of the claim filed by Mahtab Azghadi. The Court will not estimate this claim.

I. BACKGROUND

Prepetition, Tessie Cleveland Community Services Corp. ("Tessie") filed a complaint against Mohsen Loghmani ("Debtor") and other defendants, initiating case no. TC023641 (the "State Court Action"). Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 152], ¶ 7, Exhibit 2. Through the State Court Action, Tessie obtained a final judgment in the amount of \$1,958,229.87 (the "Judgment"). *Id.* Calculated with interest, the Judgment is currently valued over \$3.5 million. *Id.* On September 23, 2014, Tessie filed another complaint against Debtor and Debtor's son, Ciavash Loghmani ("Matt"), among other defendants, initiating case no. BC558489 (the "Fraudulent Transfer Action"). *See* Proof of Claim 5-1.

On August 1, 2016, Debtor and Mahshid Loghmani ("Mahshid") filed a joint voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). In their petition, Debtor and Mahshid identified Mahtab Azghadi ("Mahtab") as a creditor and indicated that Mahtab's address was 8212 Laurel Canyon Blvd., North Hollywood, CA 91605 (the "North Hollywood Address"). The petition was served on Mahtab at this address.

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In their original schedule E/F [doc. 14], Debtor and Mahshid indicated that Mahshid, and not Debtor, incurred the debt owed to Mahtab. On June 21, 2017, Debtor and Mahshid filed an amended schedule E/F [doc. 33], this time indicating that both Debtor and Mahshid incurred the debt owed to Mahtab.

On December 4, 2017, the Trustee filed a notification of asset case (the "Notice of Assets") [doc. 45]. In the Notice of Assets, the Trustee set March 9, 2018 as the claims bar date. The Notice of Assets was served on Mahtab at the North Hollywood Address.

On October 19, 2018, the Court entered an order severing the joint petition filed by Debtor and Mahshid [doc. 80]. The Court instructed Debtor and Mahshid to file individual schedules and statements. On November 5, 2018, Debtor filed his post-severance schedule E/F [doc. 87]. In his schedule E/F, Debtor indicated he did not have any unsecured creditors. Concurrently, Mahshid filed her individual schedule E/F in her severed case [1:16-bk-12214-VK, doc. 88], indicating she incurred the debt owed to Mahtab.

On March 18, 2020, Debtor's bankruptcy case was closed. On August 23, 2020, the Trustee filed a motion to reopen Debtor's case [doc. 98], asserting that the Trustee had discovered Debtor's undisclosed membership interest in Huntley-Broadlawn, LLC ("Huntley"), an entity that owned and operated a preschool. On August 11, 2020, the Court entered an order reopening Debtor's bankruptcy case [doc. 100].

On April 15, 2021, the Court entered an order approving the sale of Debtor's interest in Huntley [doc. 149], resulting in the estate holding \$209,909.11 (the "Funds"). On August 19, 2021, the Trustee filed a motion for approval of a compromise between the estate and Tessie and sale of certain litigation claims held by the estate to Tessie (the "Compromise Motion") [doc. 152]. To the Compromise Motion, the Trustee attached the proposed agreement between the estate (the "Estate") and Tessie (the "Agreement"), which provided, in relevant part, that Tessie would subordinate its \$3.5 million claim to the two timely filed unsecured claims against the estate._

On August 26, 2021, after the Trustee filed the Compromise Motion, Mohammad Hossein Loghmani ("Mohammad") filed proof of claim no. 6, asserting an unsecured claim in the amount of \$340,000. In the proof of claim, Mohammad indicated that the

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basis of his claim was a loan to Debtor. Debtor and Mahshid had never identified Mohammad as a creditor; as a result, Mohammad was not served with the bankruptcy petition or the Notice of Assets. On the same day, Mahtab filed proof of claim no. 7, asserting an unsecured claim in the amount of \$65,000. In the proof of claim, Mahtab also indicated that the basis of her claim was a loan to Debtor. Concurrently with the filing of these proofs of claim, Matt (Debtor's son) filed an opposition to the Compromise Motion [doc. 157].

On September 9, 2021, the Court held a hearing on the Compromise Motion. At that time, the Court continued the hearing on the Compromise Motion for the parties to brief the validity and priority of Mohammad's and Mahtab's claims.

On September 14, 2021, Tessie filed an objection to Mohammad's claim (the "Mohammad Objection") [doc. 162]. On the same day, Tessie filed an objection to Mahtab's claim (the "Mahtab Objection") [doc. 165]. In both the Mohammad Objection and the Mahtab Objection, Tessie asserts that: (A) the claims are time barred; (B) the proofs of claim are not properly verified; [FN1] (C) the claims lack evidentiary support; and (D) the proofs of claim were not timely filed.

On October 7, 2021, Mohammad filed an opposition to the Mohammad Objection (the "Mohammad Opposition") [doc. 169]. In the Mohammad Opposition, Mohammad argues that: (A) his claim is not time barred because Mohammad and Debtor agreed that Debtor would repay the debt when he was financially able to do so; (B) the loans were to help fund Debtor's business; and (C) there is no evidence that Mohammad received notice of the claims bar date prior to expiration of the deadline to file claims. On the same day, Mahtab filed an opposition to the Mahtab Objection (the "Mahtab Opposition") [doc. 171]. In the Mahtab Opposition, Mahtab argues that: (A) her claim is not time barred because Mahtab and Debtor agreed that Debtor would repay the debt when he was financially able to do so; (B) the loans were to help fund Debtor's business; and (C) there is no evidence that Mahtab received notice of the claims bar date prior to expiration of the deadline to file claims.

On October 14, 2021, Tessie filed a reply to both oppositions [doc. 173], asserting that: (A) neither Mohammad nor Mahtab disputed having actual knowledge of Debtor's bankruptcy case; (B) Debtor did not schedule Mohammad as a creditor and, as a result, considered the debt time barred; (C) at most, Mohammad's evidence

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shows \$6,200 transferred from Mohammad to Debtor; (D) Mahtab made misrepresentations about her residence; (E) any payments by Mahtab to Debtor or Mahshid were for repayment of a debt, not to fund a loan to Debtor; (F) assuming the debts owed to Mohammad and Mahtab were conditioned on Debtor's ability to pay, the claimants bear the burden of proving the condition has been triggered; and (E) if the Court does not disallow the claims, the Court should estimate both claims at \$0.

II. ANALYSIS

A. General Objection to Claim Standard

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted). "If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

B. Notice of Bankruptcy Case

Under 11 U.S.C. § 726(a)(2)(C), an unsecured claim that is tardily filed may be distributed with timely filed unsecured claims if two conditions are met: "(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

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(ii) proof of such claim is filed in time to permit payment of such claim...." (emphasis added). Regarding the first condition, the Ninth Circuit Court of Appeals has held that, even if a creditor does not receive notice of the claims bar date, "actual knowledge of the bankruptcy proceeding before the claims bar date precludes a creditor from seeking relief under § 726." *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1433 (9th Cir. 1990); *see also In re Sunland, Inc.*, 534 B.R. 793, 798 (Bankr. D.N.M. 2015) ("The language 'unless such creditor had notice or actual knowledge of the case in time for such timely filing' has been interpreted to burden the creditor with inquiry notice if it receives actual notice of a bankruptcy case.").

"A creditor seeking relief under § 726(a)(2)(C) bears the burden of showing neither notice nor actual knowledge of the bankruptcy." *In re Schauer*, 2012 WL 5897654, at *1 (Bankr. N.D. Cal. Nov. 21, 2012); *see also In re Meyers*, 171 B.R. 274, 277 (Bankr. N.D. Ohio 1994) (holding that the creditor must prove that notice was not received or that the creditor did not have actual knowledge of the case). In addition, "[a] creditor who challenges the accuracy of a listed address bears the burden of proving that the address used was so incorrect as to fall short of the threshold." *In re Harrell*, 325 B.R. 643, 648 (Bankr. M.D. Fla. 2005).

Mohammad argues that Tessie did not present evidence that Mohammad received notice of the claims bar date. However, as set forth by the authorities above, it is *Mohammad's* burden to prove that Mohammad not only did not receive notice of the bankruptcy case, but lacked actual knowledge of the bankruptcy case. Mohammad's declaration in support of the Mohammad Opposition is completely silent as to these issues. In addition, the declarations submitted by Debtor and Mahshid do not include any information regarding whether they informed Mohammad about this bankruptcy case. As such, Mohammad has not met his burden of proving that, prior to expiration of the claims bar date, he did not receive notice or have actual knowledge of the bankruptcy case. [FN2].

Unlike Mohammad, Mahtab was served with Debtor and Mahshid's bankruptcy petition and the Notice of Assets. Without providing any proof of her residence during the relevant time periods, Mahtab contends that she has never resided in the United States and does not have a mailing address in the United States. Declaration of Mahtab Azghadi, ¶ 3. In fact, as noted by Tessie, in 2013, Mahtab signed a personal signature card identifying the North Hollywood Address as her personal address. Supplemental Declaration of Michael E. Thompson [doc. 173], ¶¶ 2-3, Exhibits 1-2. In the signature card, Mahtab also stated, under penalty of perjury, that she was a

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"U.S. citizen or other U.S. person (as defined in the Form W-9 instructions." *Id.* This evidence contradicts Mahtab's current testimony.

Mahtab also argues that Tessie did not provide evidence that Mahtab received notice of the claims bar date. In her declaration, Mahtab states that she "did not receive notice of the *claims bar date*." Declaration of Mahtab Azghadi, ¶ 8 (emphasis added). However, Mahtab's declaration is silent as to whether Mahtab had actual knowledge of the bankruptcy case. In a similar vein, both Debtor and Mahshid provide declarations in which they state that they did not provide Mahtab "with the Notice of Claims Bar Date." Declaration of Mohsen Loghmani, ¶ 10; Declaration of Mahshid Loghmani, ¶ 9. Neither Debtor nor Mahshid state that they did not inform Mahtab about *the bankruptcy case*. Thus, Mahtab has not met her burden of proving that she was served at the wrong address and/or did not have actual knowledge of the bankruptcy case.

Further, both Mohammad and Mahtab are relatives of Debtor and/or Mahshid. Mohammad is Debtor's brother and Mahtab is Mahshid's sister. Declaration of Mohsen Loghmani [doc. 169], ¶ 2; Declaration of Mahshid Loghmani [doc. 171], ¶ 2. As such, both Mohammad and Mahtab are deemed insiders under the Bankruptcy Code. *See* 11 U.S.C. § 101(31) and (45). Mahshid also previously testified that Mahtab and Mohammad frequently visited Debtor and Mahshid and stayed for long periods of time. Declaration of Michael E. Thompson [doc. 165], ¶ 5, Exhibit 4, 91:19-20:1; Declaration of Michael E. Thompson [doc. 162], ¶ 6, Exhibit 4, 94:25-95:11. Given the close relationship between Debtor, Mahshid, Mohammad and Mahtab, and the lack of any evidence that Mahtab and Mohammad did not have actual knowledge of their siblings' bankruptcy filing, neither Mahtab nor Mohammad have met their burden of proving that they are entitled to distribution with timely-filed claims under 11 U.S.C. § 726(a)(2)(C).

C. Statute of Limitations

Tessie also asserts that, under California law, both Mohammad's and Mahtab's claims are time barred. Cal. Code of Civ. Proc. § 339(1) (providing a two year statute of limitations for "[a]n action upon a contract" for which the "obligation or liability [is] not founded upon an instrument of writing").

With respect to Mohammad, the bank statements attached to Mohammad's proof of claim show transfers from 2009 to 2012, i.e., from approximately four to seven years

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before the petition date. Similarly, Mahtab's proof of claim indicates that she provided the cash loans from 2010 to 2011. Under Cal. Code of Civ. Proc. § 339(1), any claim for repayment of these transfers, based on an oral agreement, would be time barred.

In their oppositions, Mohammad and Mahtab contend, for the first time, that Debtor and the claimants conditioned repayment of the purported loans on L.A. Design Group's ability to repay the loans. [FN3]. As such, Mohammad and Mahtab argues that the statute of limitations would not be triggered until L.A. Design Group satisfied that condition. "[I]n an action upon a contract to pay 'when able,' the promise is conditional and 'no cause of action accrues until the condition is performed; that is to say, until the debtor is able to pay.'" *Horacek v. Smith*, 33 Cal.2d 186, 191 (1948) (quoting *Van Buskirk v. Kuhns*, 164 Cal. 472, 474 (1913)). "The statute of limitations is an affirmative defense," and the defendant has the burden of proving an affirmative defense. *Fuller v. White*, 33 Cal.2d 236, 240 (1948); *see also In re Davis*, 554 B.R. 918, 921 (Bankr. D. Idaho 2016) (holding that, while a claimant has the ultimate burden of persuasion on its claim, under applicable state law, "the statute of limitations is an affirmative defense, and the party asserting it bears the burden of proof"); *and Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) (holding that the burden of proof is a substantive element of state law applicable when federal courts apply state law).

Here, Tessie has the burden of proving that the claims are time barred. At this time, aside from conclusory statements by Debtor and Mahshid, Tessie has not provided evidence regarding Debtor's and/or L.A. Design Group's prepetition ability to repay the debts purportedly owed to Mohammad and Mahtab. Nevertheless, because the proofs of claim filed by Mohammad and Mahtab did not mention that repayment of the debts owed to them were conditioned on Debtor's ability to pay, the Court will provide Tessie an opportunity to obtain discovery and/or cross-examine Mohammad and Mahtab regarding the specifics of the agreements between Debtor and the claimants.

Tessie further argues that, assuming repayment of the debts was conditioned on L.A. Design Group's ability to pay, the claimants have not shown that L.A. Design Group will ever have the ability to pay. However, because Debtor and L.A. Design Group are legally considered the same entity, the estate's ability to distribute to creditors

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would satisfy the condition. That the condition was triggered postpetition would not impact a claimant's right to recover from this estate. *See* 11 U.S.C. § 101(5)(A) (defining "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured"); *and In re Jastrem*, 224 B.R. 125, 129 (Bankr. E.D. Cal. 1998) (drawing a distinction between "the accrual of a cause of action under state law with the existence of a claim for purposes of a bankruptcy case"). Here, because the purported debts stemmed from prepetition agreements, Mohammad and Mahtab would have a "claim" against the estate notwithstanding the postpetition trigger of the condition precedent. As such, at this time, the Court will not disallow Mohammad's and Mahtab's claims; if Tessie would like to pursue disallowance of the claims, the Court will provide a period to obtain discovery and set an evidentiary hearing.

D. Validity of Claims

In the Mohammad Objection, Tessie noted that the bank statements attached to Mohammad's proof of claim did not include any information regarding the identity of the accountholder, and did not show that the highlighted transfers came from Mohammad. As such, Tessie successfully shifted the burden to Mohammad by "show[ing] facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim." *Lundell*, 223 F.3d at 1039. Thus, Mohammad bears the burden to prove the validity of his claim by a preponderance of the evidence, as well as the ultimate burden of persuasion on his claim. *Id.*

In the Mohammad Opposition, Mohammad provided a declaration, as well as declarations by Debtor and Mahshid, regarding the terms of the oral agreement between the parties. As support, Mohammad also attached several checks and deposit slips. However, with the exception of three checks, the records do not indicate that Mohammad was the source of funds. [FN4]. Moreover, some of the wire transfers identified by Mohammad as evidence of the purported loan payments were previously identified by Debtor and Mahshid as loan repayments from *Debtor* to *Mahshid*. Supplemental Declaration of Michael E. Thompson, ¶ 4, Exhibit 3. Thus, the testimony in support of the Mohammad Opposition contradicts prior testimony submitted by Debtor and Mahshid.

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In addition, as noted by Tessie, Debtor did not identify Mohammad as a creditor in this bankruptcy case. [FN5]. As such, Debtor's current testimony is inconsistent with his schedules and statements. Nevertheless, in light of the checks attached to the Mohammad Opposition. Mohammad has, at most, demonstrated entitlement to a claim totaling \$6,200. In order to adjudicate the parties' credibility as to the remaining \$6,200, and to the extent Tessie pursues disallowance of this claim, the Court will set an evidentiary as to the validity of the \$6,200 claim by Mohammad.

As to Mahtab, the evidence reflects certain inconsistencies. Specifically, as discussed above, Debtor and Mahshid originally scheduled Mahtab as a creditor of *Mahshid*, not Debtor. In addition, although Debtor and Mahshid subsequently amended their schedules to indicate that they both owed the debt to Mahtab, after severance of this case, Debtor filed schedules stating that he did not have any unsecured creditors. On the other hand, post-severance, Mahshid indicated *she* owed the debt to Mahtab.

Moreover, Tessie referenced Debtor's prior testimony that Mahtab made payments to Mahshid as repayments for a loan Mahshid funded for Mahtab's schooling. However, in the declarations in support of the Mahtab Opposition, Debtor, Mahshid and Mahtab contend that the loans were unrelated to the reimbursement payments made by Mahtab. As such, to better assess the parties' credibility, and to the extent Tessie elects to pursue disallowance of this claim, the Court will set an evidentiary hearing on the validity of Mahtab's claim.

E. Estimation of Claims

Pursuant to 11 U.S.C. § 502(c)(1), "[t]here shall be estimated for purpose of allowance under this section... any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...." "The language of Section 502(c) is mandatory... *where the actual liquidation of the claim would unduly delay closing of the case.*" *In re Curtis*, 40 B.R. 795, 801 n.7 (Bankr. D. Utah 1984) (emphasis added).

From the plain language of § 502(c), it is clear that estimation does not become mandatory merely because liquidation may take longer and thereby delay administration of the case. Liquidation of a claim, in fact, will almost always be more time consuming than estimation.

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Nonetheless, bankruptcy law's general rule is to liquidate, not to estimate. For estimation to be mandatory, then, the delay associated with liquidation must be "undue."

Something is "undue" if it is "unjustifiable." Random House College Dictionary, at 1433 (rev. ed.1980). Inquiry into whether liquidating... claims would be unjust, due to any case delay that may result therefrom, dictates that the Court perform a kind of cost-benefit analysis by considering the time, costs and benefits associated with both estimation and liquidation.

In re Dow Corning Corp., 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997).

Here, liquidation of the claims filed by Mohammad and Mahtab would not unduly delay closing of Debtor's case. Liquidation of the claims would involve calculating the amount of funds transferred from Mohammad and/or Mahtab to Debtor. Given the relative ease of this calculation, liquidating the claims filed by Mohammad and Mahtab would not unduly delay administration and necessitate estimation. Because "bankruptcy law's general rule is to liquidate," the Court will deny Tessie's request to estimate these claims. *Dow Corning*, 211 B.R. at 563.

III. CONCLUSION

The Court will not treat Mohammad's and Mahtab's tardily-filed claims as having equal priority to timely-filed unsecured claims under 11 U.S.C. § 726(a)(2)(C). The Court also will reduce Mohammad's claim to \$6,200. If Tessie elects to proceed with disallowance of the claims, the Court will set an evidentiary hearing on the validity of the claims. Finally, the Court will not estimate these claims.

Tessie must submit an order within seven (7) days.

FOOTNOTES

1. In their oppositions to the Mohammad Objection and the Mahtab Objection, Mohammad and Mahtab signed their declarations under penalty of perjury "under the laws of the United States of America." As such, the Court will not

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address Tessie's argument regarding 28 U.S.C. § 1746(1) because Mohammad's and Mahtab's declarations in support of their claims, attached to their oppositions, rendered the issue moot.

2. The Court notes that many of the checks provided by Mohammad identify 5454 Zelzah Avenue, Apt. 215, Encino, CA 91316 (the "Zelzah Address") as an address used by Debtor, Mahshid, *and Mohammad*. See, e.g., Exhibit 2, p. 14 (a check by Debtor and Mahshid identifying the Zelzah Address as their address); Exhibit 2, p. 24 (identifying the Zelzah Address as Mohammad's address).
3. In his bankruptcy petition, Debtor indicated that L.A. Design Group is Debtor's "doing business as" name and that Debtor operated L.A. Design Group as a sole proprietorship. Under California law, a sole proprietorship is not a separate legal entity from the individual owner. *Twenty-Nine Palms Enterprises Corp. v. Bardos*, 210 Cal.App.4th 1435, 1449–50 (Ct. App. 2012). As such, in discussing this issue, the Court may use "Debtor" and "L.A. Design Group" interchangeably.
4. The three checks are dated October 30, 2009, June 14, 2010 and June 22, 2010 in the amounts of \$4,000, \$700 and \$1,500, totaling \$6,200. Declaration of Mohsen Loghmani, ¶ 5, Exhibit 2, pp. 24, 44, 48.
5. Debtor identified Mohammad as a creditor in connection with a 2012 bankruptcy petition filed by Debtor [1:12-bk-12998-VK].

Party Information

Debtor(s):

Mohsen Loghmani

Pro Se

Movant(s):

Tessie Cleveland Community

Represented By

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Bruce M Cohen
Michael E Thompson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

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1:19-11482 Kimball West Small

Chapter 7

#15.00 Motion to: (1) Approve Sale of Billboard Properties Free and Clear of all Liens, Interests, Claims, and Encumbrances with Such Liens, Interests, Claims, and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. sections 363(b), (f) and (i); (2) Approve Overbid Procedures; and (3) Determine that Buyers are Entitled to Protection Pursuant to 11 U.S.C. section 363(m)

Docket 112

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Kimball West Small

Represented By
Varand Gourjian

Trustee(s):

Nancy J Zamora (TR)

Represented By
David Seror
Jessica L Bagdanov
Tamar Terzian

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1:20-10026 Joseph Wanamaker

Chapter 7

#16.00 Motion by creditors The Affiliati Network, Inc. and Sanjay Palta
objecting to the debtor's homestead exemption in amended schedules
filed August 5, 2021

fr. 10/21/21(stip)

Docket 241

***** VACATED *** REASON: Withdrawal filed 11/6/2021 [Doc.316/321]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Wanamaker

Represented By
Peter M Lively
David B Lally

Movant(s):

The Affiliati Network, Inc.

Represented By
Brett B Curlee
Stella A Havkin

Sanjay Palta

Represented By
Brett B Curlee
Stella A Havkin

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena

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1:21-10254 David Nkruryan

Chapter 7

#17.00 Motion to Convert Chapter 7 to Chapter 13

Docket 27

***** VACATED *** REASON: Order granting stipulation to convert to Chapter 13 entered on November 8, 2021 [doc. 34].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Nkruryan

Represented By
Rosie Barmakszian

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#18.00 Motion for order dismissing case; recusal of general counsel;
disgorging fees and revoking confirmed plan

Docket 497

***** VACATED *** REASON: Continued to 12/16/21 at 2:00 PM - on the
Court's own motion**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y. Oh

Richard P Steelman Jr

Movant(s):

Kevin Moda

Represented By

Raymond G Robinson

Eric Honig

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#19.00 Confirmation hearing re chapter 11 subchapter V plan
and related deadlines

fr. 7/8/21(stip)

Docket 88

***** VACATED *** REASON: Order approving stip entered on 10/13/21
hearing continued to 2/10/22 at 2:00 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#20.00 Status conference re: chapter 11 subchapter V case

fr. 3/25/21; 4/8/21; 4/22/21; 4/29/21; 7/22/21

Docket 1

Tentative Ruling:

Have the debtors filed their income tax returns for 2020?

The Court intends to continue the chapter 11 case status conference to **2:00 p.m. on January 27, 2022**. No later than **January 13, 2022**, the debtors must file and serve on all secured creditors, the 20 largest unsecured creditors, the Subchapter V Trustee and the United States Trustee a joint status report regarding the outcome of the debtors' state court litigation and the debtors' progress toward confirming a chapter 11 plan. The status report must be supported by evidence in the form of declarations and any supporting documents.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10223 SteriWeb Medical LLC

Chapter 11

#21.00 Confirmation hearing re chapter 11 subchapter V plan
fr. 8/12/21(stip); 10/14/21

Docket 77

***** VACATED *** REASON: Order dismissing case entered 10/27/21 [doc. 126].**

Tentative Ruling:

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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1:21-11348 Gagik Sargsyan

Chapter 11

#22.00 Motion in Individual Ch 11 Case for Order
Employing Professional (LBR 2014-1)

fr. 10/7/21

Docket 11

Tentative Ruling:

Grant.

Debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Gagik Sargsyan

Represented By
Vahe Khojayan

Trustee(s):

Andrew W. Levin (TR)

Pro Se

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1:21-11348 Gagik Sargsyan

Chapter 11

#23.00 Status conference re: chapter 11, subchapter V case

fr. 9/23/21; 10/7/21

Docket 1

Tentative Ruling:

The debtor's "Status Report" filed on November 8, 2021 [doc. 70] is not supported by a declaration.

Any dismissal of this case must provide an opportunity for the Court to assess the amount of fees and reimbursement of expenses payable to the Subchapter V Trustee and must ensure the payment in full of the Subchapter V Trustee's allowed fees and expenses.

October 7, 2021 Tentative Ruling

The debtor must explain the differences between his projected income and expenses for six months, post-petition [doc. 54], and his described income and expenses, as set forth in his schedules I and J [doc. 1].

In addition, what are debtor and LNV Corporation's intentions for participating in mediation concerning, *inter alia*, the terms of a chapter 11 plan, with the Subchapter V trustee or with another mediator?

The bar date has been set for **October 19, 2021**.

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **November 8, 2021**.

Party Information

Debtor(s):

Gagik Sargsyan

Represented By

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CONT... **Gagik Sargsyan**

Vahe Khojayan

Chapter 11

Trustee(s):

Andrew W. Levin (TR)

Pro Se